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18 BANK USA, N.A.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21

22 Philip Wong, Frederic Chaussy, and Leslie
23 Marie Shearn, individually, on behalf of all
24 others similarly situated, and on behalf of
the general public.,

25 Plaintiffs,

26 v.

27 HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

28 Defendants.

Case No. C 07 2446 MMC (JCS)

STIPULATED PROTECTIVE ORDER

STIPULATED PROTECTIVE ORDER

Case No. C 07 2446 MMC (JCS)

1 **PURPOSE AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords extends only to the limited information or
8 items that are entitled under the applicable legal principles to treatment as confidential. The parties
9 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates
10 no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and reflects the standards that will be applied when a party seeks
12 permission from the court to file material under seal.

13 **DEFINITIONS**

14 **2.1 Party:** any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 **2.2 Disclosure or Discovery Material:** all items or information, regardless of the medium
17 or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
18 tangible things) that are produced or generated in disclosures or responses to discovery in this
19 matter.

20 **2.3 "Confidential" Information or Items:** information (regardless of how generated,
21 stored or maintained) or tangible things that qualify for protection under standards developed under
22 F.R.Civ.P. 26(c). The parties expressly agree that Confidential Information or Items shall include
23 Disclosure or Discovery Material, such as personnel files, that constitutes or contains sensitive
24 employment and personal information about employees, former employees, and/or nonparties to this
25 action which, if disclosed to others, would unreasonably harm the confidentiality interest of these
26 nonparties.

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1 2.4 "Highly Confidential—Attorneys' Eyes Only" Information or Items: extremely
2 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party would
3 create a substantial risk of serious injury that could not be avoided by less restrictive means.

4 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material
7 in this action.

8 2.7 Designating Party: a Party or non-party that designates information or items that it
9 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential—
10 Attorneys' Eyes Only."

11 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
12 "Confidential" or as "Highly Confidential—Attorneys' Eyes Only."

13 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to
14 represent or advise a Party in this action.

15 2.10 House Counsel: attorneys who are employees of a Party.

16 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
17 support staffs).

18 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
20 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
21 a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
22 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
23 connection with this litigation.

24 2.13 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
26 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

27 3. SCOPE
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1 The protections conferred by this Stipulation and Order cover not only Protected Material (as
2 defined above), but also any information copied or extracted therefrom, as well as all copies,
3 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
4 parties or counsel to or in court or in other settings that might reveal Protected Material.

5 **4. DURATION**

6 Even after the termination of this litigation, the confidentiality obligations imposed by this
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
8 otherwise directs.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
11 non-party that designates information or items for protection under this Order must take care to limit
12 any such designation to specific material that qualifies under the appropriate standards. A
13 Designating Party must take care to designate for protection only those parts of material, documents,
14 items, or oral or written communications that qualify—so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
18 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
19 encumber or retard the case development process, or to impose unnecessary expenses and burdens
20 on other parties), expose the Designating Party to sanctions.

21 If it comes to a Party's or a non-party's attention that information or items that it designated
22 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
23 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
24 mistaken designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
26 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
27 that qualifies for protection under this Order must be clearly so designated before the material is
28 disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of depositions or other
3 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
4 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" at the top of each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins) and must specify, for each portion, the level of protection being asserted
8 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

9 A Party or non-party that makes original documents or materials available for inspection
10 need not designate them for protection until after the inspecting Party has indicated which material it
11 would like copied and produced. During the inspection and before the designation, all of the
12 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL—
13 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Order, then, before producing the specified documents, the
16 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
17 CONFIDENTIAL—ATTORNEYS' EYES ONLY") at the top of each page that contains Protected
18 Material. If only a portion or portions of the material on a page qualifies for protection, the
19 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins) and must specify, for each portion, the level of protection being asserted
21 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

22 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
23 Party or non-party offering or sponsoring the testimony identify on the record, before the close of the
24 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of
25 the testimony that qualify as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." When
26 it is impractical to identify separately each portion of testimony that is entitled to protection, and
27 when it appears that substantial portions of the testimony may qualify for protection, the Party or
28 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the

1 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions
 2 of the testimony as to which protection is sought and to specify the level of protection being asserted
 3 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”). Only
 4 those portions of the testimony that are appropriately designated for protection within the 20 days
 5 shall be covered by the provisions of this Stipulated Protective Order.

6 Transcript pages containing Protected Material must be separately bound by the court
 7 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
 8 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering
 9 or sponsoring the witness or presenting the testimony.

10 (c) for information produced in some form other than documentary, and for any other
 11 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 12 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
 13 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only portions of the information or item
 14 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 15 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential—Attorneys’
 16 Eyes Only.”

17 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
 18 designate qualified information or items as “Confidential” or “Highly Confidential—Attorneys’
 19 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
 20 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
 21 Confidential—Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
 22 on timely notification of the designation, must make reasonable efforts to assure that the material is
 23 treated in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party’s
 26 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 27 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
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1 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
2 after the original designation is disclosed.

3 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating Party's
4 confidentiality designation must do so in good faith and must begin the process by conferring
5 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
6 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
7 that the confidentiality designation was not proper and must give the Designating Party an
8 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
9 designation is offered, to explain the basis for the chosen designation. A challenging Party may
10 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
11 process first.

12 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a confidentiality
13 designation after considering the justification offered by the Designating Party may file and serve a
14 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
15 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
16 motion must be accompanied by a competent declaration that affirms that the movant has complied
17 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
18 specificity the justification for the confidentiality designation that was given by the Designating
19 Party in the meet and confer dialogue.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
22 question the level of protection to which it is entitled under the Producing Party's designation.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
25 produced by another Party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
27 the categories of persons and under the conditions described in this Order. When the litigation has
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1 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
4 secure manner that ensures that access is limited to the persons authorized under this Order.

5 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise ordered
6 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated CONFIDENTIAL only to:

8 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees
9 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
10 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit
11 A;

12 (b) the officers, directors, and employees (including House Counsel) of the Receiving
13 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
14 "Agreement to Be Bound by Protective Order" (Exhibit A);

15 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
16 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
17 Protective Order" (Exhibit A);

18 (d) the Court and its personnel;

19 (e) court reporters, their staffs, and professional vendors to whom disclosure is
20 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
21 Protective Order" (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
23 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

24 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
25 must be separately bound by the court reporter and may not be disclosed to anyone except as
26 permitted under this Stipulated Protective Order.

27 (g) the author of the document or the original source of the information.

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1 **7.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"**
 2 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
 3 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
 4 CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

5 (a) (a) the Receiving Party's Outside Counsel of record in this action, as well as
 6 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 7 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 8 hereto as Exhibit A;

9 (b) House Counsel of a Receiving Party (1) to whom disclosure is reasonably necessary
 10 for this litigation, and (2) who has signed the "Agreement to Be Bound by Protective Order"
 11 (Exhibit A);

12 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for
 13 this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
 14 A);

15 (d) the Court and its personnel;

16 (e) court reporters, their staffs, and professional vendors to whom disclosure is
 17 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
 18 Protective Order" (Exhibit A); and

19 (f) the author of the document or the original source of the information.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 21 LITIGATION.

22 If a Receiving Party is served with a subpoena or an order issued in other litigation that
 23 would compel disclosure of any information or items designated in this action as
 24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," the
 25 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
 26 and in no event more than three court days after receiving the subpoena or order. Such notification
 27 must include a copy of the subpoena or court order.

1 The Receiving Party also must immediately inform in writing the Party who caused the
 2 subpoena or order to issue in the other litigation that some or all the material covered by the
 3 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 4 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
 5 caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the existence of this
 7 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
 8 confidentiality interests in the court from which the subpoena or order issued. The Designating
 9 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 10 material—and nothing in these provisions should be construed as authorizing or encouraging a
 11 Receiving Party in this action to disobey a lawful directive from another court.

12 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 14 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 15 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 16 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
 17 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
 18 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
 19 that is attached hereto as Exhibit A.

20 **10. FILING PROTECTED MATERIAL**

21 Without written permission from the Designating Party or a court order secured after
 22 appropriate notice to all interested persons, a Party may not file in the public record in this action
 23 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
 24 with Civil Local Rule 79-5.

25 **11. FINAL DISPOSITION**

26 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
 27 the final termination of this action, each Receiving Party must return all Protected Material to the
 28 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,

1 compilations, summaries or any other form of reproducing or capturing any of the Protected
 2 Material. With permission in writing from the Designating Party, the Receiving Party may destroy
 3 some or all of the Protected Material instead of returning it. Whether the Protected Material is
 4 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party
 5 (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that
 6 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
 7 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
 8 summaries or other forms of reproducing or capturing any of the Protected Material.
 9 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
 10 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
 11 materials contain Protected Material. Any such archival copies that contain or constitute Protected
 12 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

13 **12. MISCELLANEOUS**

14 **12.1 Right to Further Relief** Nothing in this Order abridges the right of any person to seek
 15 its modification by the Court in the future.

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1 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective Order
2 no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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8 DATED: 9/6/07


BRYAN J. SCHWARTZ
NICHOLS KASTER & ANDERSON, PLLP
Attorneys for Individual and Representative
Plaintiffs

11
12 DATED: 9/7/07


MICHELLE R. BARRETT
LITTLER MENDELSON, P.C.
Attorneys for Defendants HSBC Mortgage
Corporation (USA) and HSBC Bank USA, N.A.

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16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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18 DATED: _____

JOSEPH C. SPERO
United States District Magistrate Judge

19 Firmwide:82972679.1 023404.1043
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, et al. v. HSBC Mortgage Corporation (USA); HSBC Bank USA, N.A., et al.*, Case No. C 07 2446 MMC (JCS). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]